



SENATE BILL 261: Sales Tax on Private Residence by Broker

2013-2014 General Assembly

Committee: House Finance
Introduced by: Sen. Jenkins
Analysis of: PCS to First Edition
S261-CSSVx-43

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SUMMARY: *The Proposed Committee Substitute for Senate Bill 261 deletes the original contents of the bill¹ and replaces it with Section 8.1 of HB 1050 Omnibus Tax Law Changes, which provides that sales tax applies to the rental of a private residence rented for fewer than 15 days in a year if the residence is rented through a real estate agent or broker. This would restore a pre-2012 interpretation of the law by the Department of Revenue. The effect of this change would also make local occupancy tax apply to these rentals as well.*

CURRENT LAW: The current law states that "*The tax does not apply to a private residence or cottage that is rented for fewer than 15 days in a calendar year....*" Another part of the statute states "*A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax.*" The exemption language does not make any reference to a broker. However, since 1984, the Department of Revenue has interpreted this private residence exemption to apply only if the residence is not listed with a real estate agent. A 1988 memo by an Associate Attorney General supported this interpretation. In 2012, the Department changed its interpretation and issued an Important Notice indicating that the sales tax exemption applied to a private residence rented for fewer than 15 days regardless of whether it was listed with a real estate agent. During the 2013 interim, the Department requested that language be added to the statute consistent with the pre-2012 interpretation. The Revenue Laws Study Committee recommended this change.

BILL ANALYSIS: This bill does two things, one is stylistic and the other is substantive. First, it moves the substance of the law imposing the State sales tax on accommodations to a new statutory section for stylistic purposes. Second, it provides that a private residence or cottage rented for fewer than 15 days that is listed with a real estate broker or agent is subject to sales tax. This change would impact the application of occupancy tax as well because G.S. 155A-155 and 160A-215 provide that "*the room occupancy tax applies to the same gross receipts as the State sales tax on accommodations and is calculated in the same manner as that tax.*"

EFFECTIVE DATE: This section would become effective June 1, 2014, and apply to private residences occupied as a transient accommodation on or after that date even if the accommodation was reserved or paid for prior to the effective date.

¹ Senate Bill 261, as it passed the Senate, authorized a sales tax refund for regional jails.

